

**REMARKS**

**Introduction**

Claims 1-44 are pending. With this amendment, claims 1, 8, 23, 31, and 41 have been amended. With the current amendments, claims 1, 8, 23, 31, and 41 are the only independent claims.

**The Office Action**

**1. The Allowed Claims**

Claims 31-40 were allowed. The Applicant wishes to thank the Examiner for the indication of allowance for these claims.

**2. The Objection to Claim 23**

Claim 23 was objected to because it recited “[t]he method of claim 20 further comprising not defining a count zone...” The Office Action stated that “Applicant should claim what the claim does and not what it does not.” The objection has been obviated for the reasons stated below.

**3. The Claim Rejections**

Claims 1-24, 28, 29, and 41-44 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,729,101 to Richmond. These rejections are traversed for the reasons stated below.

**4. The Objections to Claims 25, 26, 27, and 30**

Claims 25, 26, 27, and 30 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. These objections are obviated for the reasons stated below.

**The Pending Claims are Allowable**

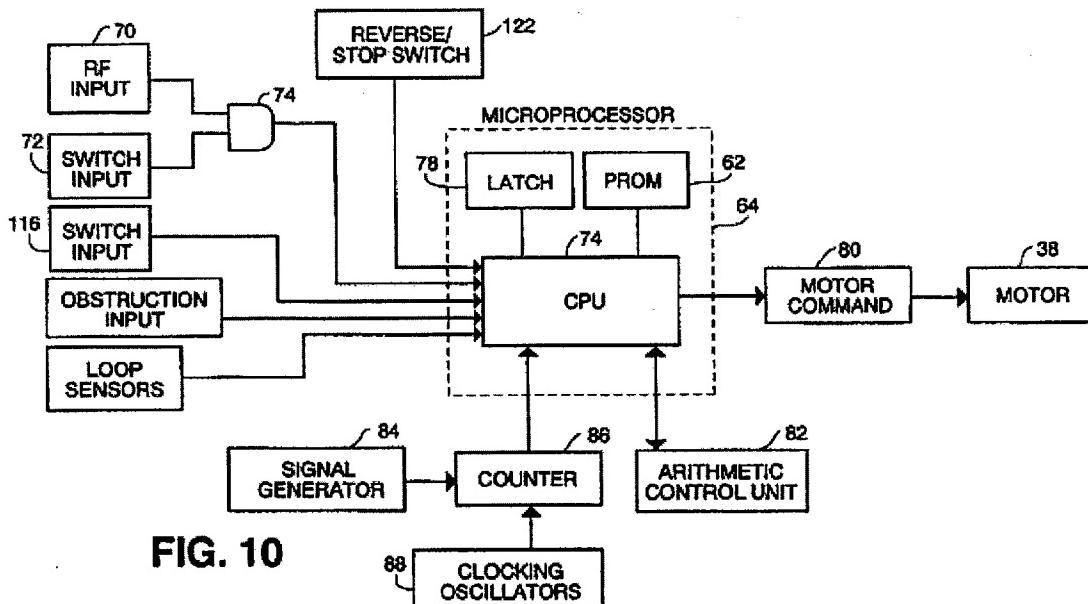
**1. Claim 23 is Allowable**

Claim 23 has been amended to remove the negative limitation from the claim as required by the Office Action. Consequently, it is submitted that the objection to claim 23 is obviated.

**2. Claims 1-24, 28, 29, and 41-44 are not anticipated Richmond**

Richmond teaches a gate operator for moving a gate between two fixed positions.

More specifically, as shown in FIG. 10 of Richmond (reproduced below for the convenience of the Examiner), a control system includes a CPU 74 that issues commands to drive a motor 38. Counts are generated by signal generator 84 and counter 86. The CPU 74 operates in conjunction with an arithmetic control unit 82 to add and subtract counts to the total count. See Richmond, col. 10, lines 38-57. A count of 500 is fixed between the end positions of the door and each rotation of the door shaft constitutes four counts. See Richmond, col. 10, lines 58-64.



The Office Action stated that signal generator 84 was a passpoint signal generator and the passpoint event was the generation of counts. See Office Action, page 3, first paragraph. The Applicant respectfully disagrees with these assertions for the reasons stated below.

The “passpoint event” as claimed by the Applicant and supported in Applicant’s specification is not a count as asserted by the Office Action. To the contrary, the “passpoint event” provides a fixed reference with which to correlate a count. For example, the “passpoint event” can be a discrete light signal provided by a light. See Specification, page 2, lines 14-19 and page 7, lines 18-29. Consequently, in light of the description provided in the Applicant’s specification, the “passpoint event” cannot be interpreted to be a count.

Moreover, even assuming that a “passpoint event” could somehow be interpreted to be a count, independent claims 1, 8, 23, 31, and 41 have been amended to specifically recite that a passpoint event *provides a fixed reference that is not a count*. In contrast and as already mentioned, the alleged passpoint event of Richmond is a count and can not provide a fixed reference since the changing count of Richmond is inherently a variable value.

For these reasons, the Applicant asserts that Richmond does not teach or suggest a “passpoint event,” let alone a “passpoint event” that is a fixed reference and not a count as recited in independent claims 1, 8, 23, 31, and 41. Consequently, since at least one element of these claims is not taught or suggested by Richmond, claims 1, 8, 23, 31, and 41 are not anticipated by Richmond. The remaining claims depend directly or indirectly upon the independent claims. Since the independent claims are not anticipated by Richmond, the dependent claims are also not anticipated by Richmond.

3. Claims 25, 26, 27, and 30 are Allowable

Claims 25, 26, 27 and 30 depend directly or indirectly upon claim 8, which has been shown to be allowable for the reasons stated above. Consequently, the objections made to these claims are obviated and it is submitted that these dependent claims are also allowable.

Application No. 10/722,372  
Response to Office Action

Docket No.:5569-79410

The Commissioner is hereby authorized to charge any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,

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